

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

JUL 31 2012

PATRICK E. DUFFY CLERK
BY Deputy Clerk
U.S. DISTRICT COURT
BILLINGS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR 06-146-BLG-RFC
)	CV 12-94-BLG-RFC
Plaintiff/Respondent,)	
)	
vs.)	ORDER DISMISSING MOTION AND
)	DENYING CERTIFICATE OF
MATT FROST,)	APPEALABILITY
)	
Defendant/Movant.)	
)	

On July 30, 2012, Defendant/Movant Matt Frost filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Frost is a federal prisoner proceeding pro se.

The motion is Frost's third under § 2255. *See* Mots. § 2255 (docs. 70, 75). His first motion, along with a certificate of appealability, was denied on August 4, 2010. Order (doc. 74). The second, along with a certificate of appealability, was denied on August 12, 2010. Order (doc. 76). Frost did not appeal either determination.

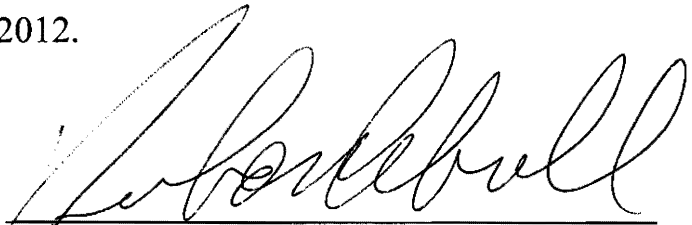
This Court lacks jurisdiction to consider a second motion. 28 U.S.C. §

2255(h); *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Because dismissal is imperative, a certificate of appealability is not warranted. Because Frost's motion is frivolous and untimely, transfer to the Court of Appeals is not in the interest of justice. 28 U.S.C. §§ 1631, 2255(f).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Frost's third § 2255 motion (doc. 77) is DISMISSED for lack of jurisdiction.
2. A certificate of appealability is DENIED.
3. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal in the civil case.

DATED this 31st day of July, 2012.

A handwritten signature in black ink, appearing to read 'Richard F. Cebull', written over a horizontal line.

Richard F. Cebull, Chief Judge
United States District Court